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10-CR 00356 VAB

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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA

14 **United States America,**

15 **Plaintiff,**

16 **vs.**

17 **Daniel Lehi,**

18 **Defendant.**

19 **CR 11-3375-TUC-RCC(CRP)**

20 **PLEA AGREEMENT**

21 Plaintiff, United States of America, and defendant, Daniel Lehi ("defendant")
22 agree to the following disposition of this matter:

23 **1. PLEA**

24 Defendant will plead guilty to the Indictment.

25 The indictment charges Assault on a Federal Officer in violation of Title 18,
26 United States Code, Section 111(a) and (b).

27 **2. MAXIMUM PENALTIES**

28 a. A violation of Assault on a Federal Officer in violation of Title 18, United
States Code, Section 111(a) and (b), is punishable by a maximum fine of \$250,000.00, a
maximum term of imprisonment of 20 years, or both, and a term of supervised release
of from 3 years to life.

b. Each supervised release violation may carry a maximum penalty of 3 years

1 in prison pursuant to Title 18, United States Code, Section 3583(e)(3).

2 c. According to the Sentencing Guidelines issued pursuant to the Sentencing
3 Reform Act of 1984, the Court shall:

4 (1) Order the defendant to make restitution to any victim of the offense,
5 pursuant to Title 18, United States Code, Section 3663 and/or 3663A, unless the Court
6 determines that restitution would not be appropriate;

7 (2) Order the defendant to pay a fine, which may include the costs of
8 probation, supervised release or incarceration, unless, pursuant to Title 18, United States
9 Code, Section 3611, the defendant establishes the applicability of the exceptions found
10 therein;

11 (3) Order the defendant, pursuant to Title 18, United States Code,
12 Section 3583 to serve a term of supervised release when required by statute or when a
13 sentence of imprisonment of more than one year is imposed, and the Court may impose a
14 term of supervised release in all other cases; and

15 (4) Pursuant to Title 18, United States Code, Section 3013, the Court is
16 required to impose a special assessment on the defendant of \$100.00. Defendant agrees,
17 as a term of this plea agreement, that the special assessment is due at the time defendant
18 enters the plea of guilty, but in no event shall it be paid later than the time of sentencing.
19 Defendant also agrees that if defendant is indigent, the special assessment will be
20 collected in the same manner as would a fine, according to the provisions of Chapters 227
21 and 229 of Title 18, United States Code.

22 d. Defendant understands that the Court is required to consider the United
23 States Sentencing Guidelines ("Sentencing Guidelines") among other factors in
24 determining defendant's sentence. Defendant understands, however, that the Sentencing
25 Guidelines are only advisory, and that after considering the Sentencing Guidelines, the
26 Court is free to exercise its discretion to impose any reasonable sentence up to the
27 maximum set by statute for the crime(s) of conviction unless there are stipulations to the
28

1 contrary that the Court accepts.
2

3 **3. AGREEMENTS REGARDING SENTENCING**
4

5 a. Stipulation Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and
6 the defendant stipulate that the defendant shall receive a term of imprisonment of **48**
7 **months consecutive to the term of imprisonment he is now serving.**

8 b. Restitution No restitution will be required.

9 c. Acceptance of Responsibility If defendant makes full and complete
10 disclosure to the U.S. Probation Office of the circumstances surrounding defendant's
11 commission of the offense, and if defendant demonstrates an acceptance of responsibility
12 for this offense up to and including the time of sentencing, the United States will
13 recommend a two-level reduction in the applicable Sentencing Guidelines offense level
14 pursuant to U.S.S.G.' 3E1.1(a).

15 d. Non-binding Recommendations The defendant understands that
16 recommendations are not binding on the Court. The defendant further understands that
17 the defendant will not be permitted to withdraw the guilty plea if the Court does not
18 follow a recommendation.

19 e. This written agreement, and any addenda filed as attachments to this plea
20 agreement, contain all the terms and conditions of the plea. Any additional agreements, if
21 any such exist, shall be recorded in a separate document and may be filed with the Court
22 under seal. Accordingly, additional agreements, if any, may not be in the public record.

23 f. Defendant recognizes that pleading guilty may have consequences with
24 respect to his/her immigration status if defendant is not a citizen of the United States.
25 Under federal law, a broad range of crimes are removable offenses, including the
26 offense(s) to which defendant is pleading guilty. Removal and other immigration
27 consequences are the subject of a separate proceeding, however, and defendant
28 understands that no one, including defendant's attorney or the district court, can predict

1 to a certainty the effect of defendant's conviction on defendant's immigration status.
2 Defendant nevertheless affirms that he wants to plead guilty regardless of any
3 immigration consequences that this plea may entail, even if the consequence is
4 defendant's automatic removal from the United States.
5

6 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

7 a. This agreement does not, in any manner, restrict the actions of the United
8 States in any other district, or bind any other United States Attorney's Office.

9 b. The government agrees to dismiss the remaining counts against the
10 defendant in the indictment if applicable.
11

12 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

13 If the Court, after reviewing this plea agreement, concludes that any provision is
14 inappropriate, it may reject the plea agreement and give the defendant the opportunity to
15 withdraw the guilty plea, in accordance with Fed. R. Crim. P. 11(c)(5).
16

17 If defendant's guilty plea or plea agreement is rejected, withdrawn, vacated, or
18 reversed at any time, this agreement shall be null and void, the United States shall be free
19 to prosecute the defendant for all crimes of which it then has knowledge, and any charges
20 that have been dismissed because of this plea agreement shall automatically be reinstated.
21 In such event, the defendant waives any and all objections, motions, and defenses based
22 upon the Statute of Limitations, the Speedy Trial Act, or constitutional restrictions in
23 bringing later charges or proceedings. The defendant understands that any statements
24 made at the time of the defendant's change of plea or sentencing may be used against the
25 defendant in any subsequent hearing, trial, or proceeding subject to the limitations of Fed.
26 R. Evid. 410.
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6. **WAIVER OF DEFENSES AND APPEAL RIGHTS**

Providing the defendant's sentence is consistent with this agreement, the defendant waives (1) any and all motions, defenses, probable cause determinations, and objections which the defendant could assert to the Indictment, Superseding Indictment or Information; and (2) any right to file an appeal, any collateral attack, and any other writ or motion that challenges the conviction, an order of restitution or forfeiture, the entry of judgment against defendant, or the imposition of sentence, including the manner in which the sentence is determined, including but not limited to any appeals under Title 18, United States Code, Section 3742 (sentence appeals) and motions under Title 28, United States Code, Sections 2241 and 2255. The defendant acknowledges that if the Court has sentenced the defendant according to the terms of this agreement, this waiver shall result in the dismissal of any appeal, collateral attack, or other motion the defendant might file challenging his conviction, order of restitution or forfeiture, or sentence in this case.

Pursuant to Title 18, United States Code, Section 3600A, the defendant knowingly and voluntarily waives the right to request DNA testing of any biological evidence in this case and understands that biological evidence collected by the United States will be destroyed after sentencing.

7. **PERJURY, FALSE STATEMENTS OR OTHER OFFENSES**

Nothing in this agreement shall be construed to protect the defendant in any way from prosecution for perjury, false declaration or false statement, or any other offense committed by defendant after the date of this agreement.

8. **DISCLOSURE OF INFORMATION TO U.S. PROBATION OFFICE**

a. The United States retains the unrestricted right to provide information and make any and all statements it deems appropriate to the U.S. Probation Office and to the Court in connection with the case.

b. Any information, statements, documents, and evidence which defendant provides to the United States pursuant to this agreement may be used against the

1 defendant at any time.

2 c. The defendant shall cooperate fully with the United States Probation
3 Office. Such cooperation will include providing complete and truthful responses to any
4 questions posed by the United States Probation Office including, but not limited to:

5 (1) All criminal history information, i.e., all criminal convictions as
6 defined under the Sentencing Guidelines;

7 (2) All financial information, e.g., present financial assets or liabilities
8 that relate to the ability of the defendant to pay a fine or restitution;

9 (3) All history of drug abuse which would warrant a treatment condition
10 as part of sentencing; and

11 (4) All history of mental illness or conditions which would warrant a
12 treatment condition as a part of sentencing.

13 **9. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

14 Nothing in this agreement shall be construed to protect the defendant from
15 administrative or civil forfeiture proceedings or prohibit the United States from
16 proceeding with and/or initiating an action for civil forfeiture. This agreement does not
17 preclude the United States from instituting any civil or administrative proceedings as may
18 be appropriate now or in the future. Pursuant to 18 U.S.C. ' 3613, all monetary penalties,
19 including restitution imposed by the Court, shall be due immediately upon judgment and
20 subject to immediate enforcement by the United States. If the Court imposes a schedule
21 of payments, the schedule of payments shall be merely a schedule of minimum payments
22 and shall not be a limitation on the methods available to the United States to enforce the
23 judgment.

24 **10. ELEMENTS OF THE OFFENSE**

25 1. On or about August 23, 2011, the defendant forcibly assaulted Drug
26 Treatment Specialist Alberto Jacquez,

27 2. He did so while Drug Treatment Specialist Alberto Jacquez was engaged in or
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1 on account of the performance of his official duties, and

2 3. He caused Bodily Injury.

3 There is a forcible assault when a person intentionally strikes another.

4 "Bodily injury" means an injury that is painful and obvious or is of a type for
5 which medical attention is ordinarily sought.
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8 **11. FACTUAL BASIS**

9 The defendant admits that the following facts are true and that if this matter were
10 to proceed to trial, the United States could prove the following facts beyond a reasonable
11 doubt:

12 On August 23, 2011, the defendant was incarcerated in the United States
13 Penitentiary in Tucson, Arizona. He went to Psychological Services and became angry
14 when he was refused certain medication he felt he was entitled to. Drug Treatment
15 Specialist Alberto Jacquez, an Officer of the United States, along with a volunteer, were
16 asked to escort the defendant from Psychological Services. The defendant punched
17 Jacquez in his face causing a fracture. The defendant was immediately restrained.
18 Jacquez was engaged in the performance of his official duties at the time.

19 **DEFENDANT'S APPROVAL AND ACCEPTANCE**

20 I have read each of the provisions of the entire plea agreement with the assistance
21 of counsel and understand its provisions and I voluntarily agree to it.

22 I have discussed the case and my constitutional and other rights with my attorney.
23 I understand that by entering my plea of guilty I will be giving up my rights to plead not
24 guilty, to trial by jury, to confront, cross examine, and compel the attendance of
25 witnesses, to present evidence in my defense, to remain silent and refuse to be a witness
26 against myself by asserting my privilege against -- self-incrimination -- all with the
27 assistance of counsel and to be presumed innocent until proven guilty beyond a
28 reasonable doubt.

1 I agree to enter my guilty plea as indicated above on the terms and conditions set
2 forth in this agreement.

3 I have been advised by my attorney of the nature of the charges to which I am
4 entering my guilty plea. I have further been advised by my attorney of the nature and
5 range of the possible sentence and that my ultimate sentence will be determined after
6 consideration of the advisory Sentencing Guidelines.

7 My guilty plea is not the result of force, threats, assurances or promises other than
8 the promises contained in this agreement. I voluntarily agree to the provisions of this
9 agreement, and I agree to be bound according to its provisions.

10 I fully understand that, if I am granted probation or placed on supervised release
11 by the Court, the terms and conditions of such probation/supervised release are subject to
12 modification at any time. I further understand that, if I violate any of the conditions of my
13 probation/supervised release, my probation/supervised release may be revoked and upon
14 such revocation, notwithstanding any other provision of this agreement, I may be
15 required to serve a term of imprisonment, or my sentence may otherwise be altered.

16 This written plea agreement, and any written addenda filed as attachments to this
17 plea agreement, contain all the terms and conditions of the plea. Any additional
18 agreements, if any such agreements exist, shall be recorded in a separate document and
19 may be filed with the Court under seal; accordingly, additional agreements, if any, may
20 not be in the public record.

21 I agree that this written plea agreement contains all the terms and conditions of my
22 plea and that promises made by anyone (including my attorney), and specifically any
23 predictions as to the guideline range applicable, that are not contained within this written
24 plea agreement are without force and effect and are null and void.


25 I further agree that promises, including any predictions as to the Sentencing
26 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
27 (including my attorney) that are not contained within this written plea agreement, are null
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1 and void and have no force and effect.

2 I am satisfied that my defense attorney has represented me in a competent manner.

3 I fully understand the terms and conditions of this plea agreement. I am not now
4 on or under the influence of any drug, medication, liquor, or other intoxicant or
5 depressant, which would impair my ability to fully understand the terms and conditions
6 of this plea agreement.

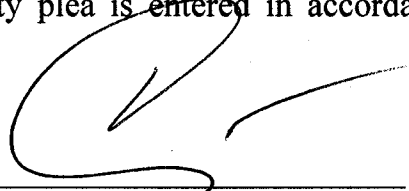
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8 4/8/13
9 Date


Daniel Lehi
Defendant

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11 **DEFENSE ATTORNEY'S APPROVAL**

12 I have discussed this case and the plea agreement with my client, in detail and have
13 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
14 constitutional and other rights of an accused, the factual basis for and the nature of the
15 offense to which the guilty plea will be entered, possible defenses, and the consequences
16 of the guilty plea including the maximum statutory sentence possible. I have further
17 discussed the concept of the advisory Sentencing Guidelines with the defendant. No
18 assurances, promises, or representations have been given to me or to the defendant by the
19 United States or by any of its representatives which are not contained in this written
20 agreement. I concur in the entry of the plea as indicated above and on the terms and
21 conditions set forth in this agreement as in the best interests of my client. I agree to make
22 a bona fide effort to ensure that the guilty plea is entered in accordance with all the
23 requirements of Fed. R. Crim. P. 11.

24
25 4/8/13
26 Date

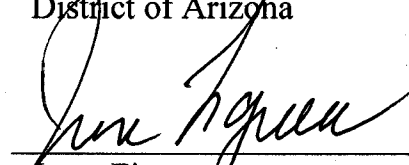

Clay Hernandez
Attorney for Defendant

UNITED STATES' APPROVAL

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth are appropriate and are in the best interests of justice.

JOHN S. LEONARDO
United States Attorney
District of Arizona

4/8/13
Date


Jesse Figueroa
Assistant U.S. Attorney